

## Message Text

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ACTION L-02

INFO OCT-01 ISO-00 IO-10 AF-10 ARA-10 EA-10 EUR-12 NEA-10

RSC-01 SSO-00 NSCE-00 INRE-00 USIE-00 CIAE-00 DODE-00

PM-03 H-02 INR-07 NSAE-00 NSC-05 PA-02 PRS-01 SP-02

SS-15 /103 W

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FM USMISSION USUN NEWYORK

TO SECSTATE WASHDC IMMEDIATE 6844

INFO AMEMBASSY THE HAGUE

AMEMBASSY MEXICO CITY

UNCLAS USUN 4499

E.O. 11652: N/A

TAGS: UN, ICI

SUBJ: UNGA LEGAL COMITE: REVIEW OF ROLE OF ICJ

1. SUMMARY: AT OCT 28 AM LEGAL COMITE MEETING NETHERLANDS FORMALLY INTRODUCED ICJ REVIEW OF ROLE RES (A/C.6/L.987), AND MEXICO INTRODUCED AMENDMENT THERETO (A/C.6/L.989). MEXICO AGREED TO ACCEPT DRAFTING CHANGES, AND PM MEETING OF INTERESTED PARTIES SCHEDULED. AT PM MEETING LANGUAGE PROPOSED BY IRAQ AND KENYA WAS CONSIDERED AS CLOSEST TO ACCEPTABLE COMPROMISE. MANY DELS STATED IT WAS NECESSARY TO SEEK INSTRUCTIONS. USSR AND BRAZILIAN DELS SUGGESTED THEY MIGHT NOT RECEIVE FAVORABLE INSTRUCTIONS. END SUMMARY.

2. AT AM OCT 28 MEETING CHAIR CALLED UPON NETHERLANDS TO FORMALLY INTRODUCE DRAFT RES IT COSPONSORED ON REVIEW OF ROLE OF ICJ (L.987). NETHERLANDS COMMENTS INCLUDED VIEW THAT DRAFT RES WAS CONSENSUS TEXT WORKED OUT BY SEVERAL SESSIONS OF WIDELY REPRESENTATIVE GROUP AND THIS CONSENSUS SHOULD NOT BE UPSET BY ANY AMENDMENTS.

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3. CHAIR THEN CALLED UPON MEXICO WHO INTRODUCED

FOLLOWING AMENDMENT (L.989), NOW COSPONSORED BY KENYA,  
CONGO, IVORY COAST, BRAZIL AND KUWAIT:

"AFTER SIXTH PREAMBULAR PARAGRAPH INSERT AN ADDITIONAL  
PARAGRAPH READING AS FOLLOWS:

'CONSIDERING ALSO THAT THE INTERNATIONAL COURT  
OF JUSTICE SHOULD TAKE INTO ACCOUNT THOSE DEVELOPMENTS  
IN INTERNATIONAL LAW REFLECTED IN DECLARATIONS AND  
RESOLUTIONS ADOPTED BY THE UNITED NATIONS GENERAL  
ASSEMBLY,'"

4. MEXICO DEL GAVE LENGTHY REMARKS WHY ARTICLE 38 OF  
STATUTE OF ICJ DID NOT CONTAIN REFERENCE TO SUCH  
DECLARATIONS AND RESOLUTIONS. CONCLUSION OF THESE REMARKS  
WAS SIMPLY THAT PRESENT UTILITY OF SUCH INSTRUCTIONS IN  
PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW WAS NOT KNOWN  
AT TIME OF DRAFTING OF THE STATUTE. COMMENT: MILD MEXICAN  
STATEMENT CAREFULLY AVOIDED NOTING THAT MEXICAN INTEREST  
IN CERDS WAS RELATED TO THEIR DESIRE TO EMPHASIZE ROLE OF  
DECLARATIONS AND RESOLUTIONS. END COMMENT.

5. IN RESPONSE TO NETHERLANDS REQUEST THAT MEXICO AND  
COSPONSORS WITHDRAW PROPOSAL SINCE (A) PROPOSAL COULD  
BE CONSTRUED AS ATTEMPT TO INTERPRET OR EXPAND ICJ  
STATUTE (AND ERGO, UN CHARTER), AND (B) WHEREAS DRAFT  
RES WAS AIMED AT STATES, AMENDMENT WAS INSTRUCTION  
FROM GENERAL ASSEMBLY (LEGISLATIVE BODY) TO ICJ  
(JUDICIAL BODY) ON LAW IT SHOULD APPLY, AND SUCH ACTION  
INTERFERED WITH PROPER FUNCTIONING OF COURT, MEXICO DEL  
STATED EMPHASITICALLY THAT IT WAS NOT ITS INTENTION TO  
EXPAND STATUTE OF COURT BY VEHICLE OF THIS PROPOSAL,  
BUT RATHER INTENTION WAS ONLY TO EMPHASIZE RELEVANCE OF  
SUCH DECLARATIONS AND RESOLUTIONS TO WORK OF COURT.  
MEXICO DEL ADDED IT WAS QUITE WILLING TO CONSIDER DRAFTING  
CHANGES WHICH WOULD MAKE CLEAR THAT PROPOSAL DOES NOT  
PREJUDICE ARTICLE 38.

6. AT SUGGESTIONS NETHERLANDS, CHAIR INVITED ALL TO  
PARTICIPATE IN PM OCT 28 DRAFTING MEETING ON MEXICAN  
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PROPOSAL.

7. AT INFORMAL DRAFTING SESSION YASSEEN (IRAQ) AND  
NJENGA (KENYA) MADE SUGGESTION WHICH RESULTED IN BROAD  
ACCEPTANCE AD REFERENDUM OF FOLLOWING TEXT:  
"RECOGNIZING THAT THE DEVELOPMENT OF INTERNATIONAL  
LAW MAY BE REFLECTED, INTER ALIA, BY  
DECLARATIONS AND RESOLUTIONS OF THE GENERAL ASSEMBLY,

WHICH MAY, TO THAT EXTENT, BE TAKEN INTO CONSIDERATION  
BY THE ICJ."

8. WHILE WE WOULD PREFER SEEING NOTHING ON THESE LINES  
IN RES WE REGARD THIS FORMULATION AS HARMLESS AND INDEED  
A VERY CONSERVATIVE FORMULATION OF THE MATTER. CONSEQUENTLY  
UNLESS DEPT PERCEIVES OBJECTION WE PLAN RAISE NO OBJECTION TO  
AMEND IF OTHERS DON'T.

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